

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Assess and Revise  
the New Regulatory Framework for Pacific Bell  
and Verizon California Incorporated.

Rulemaking 01-09-001  
(Filed September 6, 2001)

Order Instituting Investigation on the  
Commission's Own Motion to Assess and Revise  
the New Regulatory Framework for Pacific Bell  
and Verizon California Incorporated.

Investigation 01-09-002  
(Filed September 6, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING IN PART AND  
DENYING IN PART PACIFIC BELL'S MOTION TO STRIKE THE PHASE 2A  
TESTIMONY FILED BY THE OFFICE OF RATEPAYER ADVOCATES**

This ruling grants in part and denies in part Pacific Bell's (Pacific's) motion to strike certain parts of the Phase 2A testimony submitted by the Office of Ratepayer Advocates (ORA).

**Background**

Pursuant to the assigned Commissioner's ruling (ACR) issued on April 24, 2002, the purpose of Phase 2A is to consider the following matters set forth in the audit report prepared by the Overland Consulting Group<sup>1</sup>:

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<sup>1</sup> Overland Consulting Group was hired by the Commission's Telecommunications Division to conduct an audit of Pacific Bell pursuant to Pub. Util. Code § 314.5 and Decision (D.) 94-06-011, D.96-05-036, D.98-10-019, and D.98-10-026.

- Pensions as addressed in the Chapter 7 of the Overland audit report, except Sections VI, VII, and VIII.
- Postretirement Benefits Other than Pensions (PBOPs) as addressed in Chapter 7 of the audit report, except Sections VI, VII, and VIII.
- Depreciation Reserve Deficiency as addressed in Chapter 8 of the audit report, except Sections III(C), III(D), and III(E).
- Income Tax Normalization associated with Pensions, PBOPs, Depreciation Reserve Deficiency, and the Universal Service Fund as addressed in the Chapter 9 of the audit report, except for (i) Sections IV through VII, and (ii) items listed in Table 9-5 other than Pensions, PBOPs, and Depreciation Reserve Deficiency.
- Whether the above issues lead to sharable earnings.
- Allegations that Pacific impeded the audit to the extent the allegations are raised in those parts of the audit report identified above.

On May 21, 2002, Pacific Bell filed a motion to strike certain portions of the Phase 2A opening and reply testimony of ORA's witness Lee-Whei Tan. ORA filed a response opposing the motion on May 23, 2002.

### **Ruling**

#### **A. Footnote 3**

Footnote 3 of Lee-Whei Tan's opening testimony states as follows:

The TD audit report also raises various problems in affiliate relationships and transactions, and cost allocations between regulated and non-regulated activities. (TD audit report, Vol. 1, pp. 1-2.) These additional non-compliances will further support the need for the Commission to take correction measurements. [sic] ORA will address these issues in Phase 2B as directed by the April 24, 2002 ACR.

Pacific moves to strike Footnote 3 on the grounds that it impermissibly addresses affiliate transactions – a matter that is outside the scope of Phase 2A. ORA responds that it is appropriate to indicate in a footnote that an issue related to Phase 2A will be addressed elsewhere.

Footnote 3 addresses matters that are outside the scope of Phase 2A. Therefore, Pacific's motion to strike Footnote 3 is granted.

**B. Section D.1.b**

Section D.1.b of Tan's opening testimony states that Pacific has been allowed to keep the increases in revenues resulting from price increases. ORA argues in Section D.1.b that allowing Pacific to keep these revenues is inconsistent with NRF and unfair to ratepayers.

Pacific moves to strike Section D.1.b on the grounds that it is outside the scope of Phase 2A. ORA responds that Section D.1.b mentions the pricing of Pacific's services in order to show that NRF, in the absence of profit sharing, harms ratepayers by exposing them to price increases without any offsetting benefit in the form of sharing.

As stated earlier, Phase 2A is limited to (1) whether Pacific misreported its costs for pensions, PBOPs, depreciation, and taxes, (2) whether the previous issue leads to sharing, and (3) whether Pacific impeded Overland's audit with respect to pensions, PBOPs, depreciation, and taxes. Section D.1.b does not address any of these issues. Therefore, Pacific's motion to strike Section D.1.b is granted.

### **C. Section G.1**

The first three sentences of Section G.1 of Tan's opening testimony state as follows:

According to TD's audit report, [Pacific] has made it difficult for TD to complete this audit. The audit report notes that the audit was hampered by "restrictions that [Pacific] imposed on the data it considered to be relevant and within the audit scope, data requests response times that averaged more than two months and sometimes extended to many months, and notwithstanding objections to requests based on scope or relevance, [Pacific's] inability or unwillingness to provide certain information and data." As a result, some audit objectives were not met and the affiliate transaction review was compromised and left incomplete.

Pacific moves to strike the second and third sentences on the grounds that they address matters outside the scope of Phase 2A. ORA responds that Section G.1 is within the Scope of Phase 2A because portions of Section G.1 (that are not quoted above) refer to specific ORA data requests related to Phase 2A issues that Pacific refused to answer.

The second sentence of Section G.1 does nothing more than quote from the Overland audit report. In another ruling issued by the assigned Administrative Law Judge, Pacific's motion to strike the portion of the Overland audit report that is quoted in the second sentence of Section G.1 is denied. Therefore, the quote from the Overland audit report is properly included in the second sentence of Section G.1, and Pacific's motion to strike this sentence is denied.

Pacific's motion to strike the third sentence of Section G.1 is granted. The sentence pertains to affiliate transactions, which is outside the scope of Phase 2A.

#### **D. Section G.2**

Section G.2 of Tan's opening testimony is a five-page discussion of how Pacific impeded ORA's efforts to audit Pacific and to obtain information from Pacific over a period of several years. Section G.2 concludes by recommending that Pacific's rates be reduced by \$20 million per year "as an incentive for Pacific to cooperate with Commission staff in providing information."

Pacific moves to strike Section G.2 on the grounds that it is outside the scope of Phase 2A. ORA responds that it is entirely proper for it to point out how ORA's experience mirrors that of Overland's auditors.

Section G.2 contains a general discussion of ORA's allegations that Pacific failed to cooperate with ORA over a period of several years. However, it does not provide specific information about whether, and to what extent, Pacific failed to cooperate with ORA with respect to matters that are within the scope of Phase 2A (i.e., pensions, PBOPs, depreciation, and taxes).<sup>2</sup> Accordingly, Section G.2 is not reasonably germane to the scope of Phase 2A, and Pacific's motion to strike Section G.2 is granted.<sup>3</sup>

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<sup>2</sup> Section G.2 contains general legal arguments about staff's right to obtain information from utilities. ORA may present these arguments in its Phase 2A briefs to the extent these arguments pertain to allegations in those parts of the Overland audit report that are the subject of Phase 2A that Pacific impeded the audit.

<sup>3</sup> As set forth in the ACR issued in December 27, 2001, the Commission will consider in Phase 3 whether to revise the New Regulatory Framework (NRF) based, in part, on the record developed regarding the level of utility cooperation in this proceeding. ORA's proposal to reduce Pacific's rates by \$20 million per year in order to provide Pacific with an incentive to cooperate with Commission staff appears to be a matter that is within the scope of Phase 3. This ruling does not prejudice the merits of such a proposal.

**E. Reply Testimony, Section C and Attachments R-C and R-D**

Section C of Tan's reply testimony states, in part, as follows:

ORA's experience mirrors the same difficulties encountered by TD's auditors in this proceeding. As stated in our opening testimony, ORA filed an emergency motion to lift the suspension on [Pacific's] sharing mechanism and suspend processing [Pacific's] application for section 271 approval on March 11, 2002, that describes the impediments that ORA had encountered in its discovery attempts in this proceeding. (See Attachment R-C for the emergency motion.) On May 9, 2002, ORA further filed a motion to compel SBC Pacific to respond to data requests regarding audit issues, describing further difficulties. (See Attachment R-D for the motion to compel.)

ORA's experience corroborates TD's testimony regarding [Pacific's] lack of cooperation in submitting to this NRF review. ORA restates its recommendation that the Commission take corrective action against [Pacific's] conduct by asking [Pacific] to pay ratepayers \$20 million/year as an incentive payment to cooperate with the Commission staff. (Opening Testimony of Lee-Whei Tan/ORA, pp. 23-28)

Pacific moves to strike (1) the first paragraph quoted above, (2) Attachments R-C and R-D referred to in the first paragraph, and (3) the first sentence of the second paragraph. Pacific argues that the testimony it seeks to strike is not only outside the scope of Phase 2A, it is outside the scope of the entire proceeding.

ORA responds that its testimony corroborates the Overland audit report. ORA also states that Attachments R-C and R-D show what information Pacific has refused to provide to ORA, including information specifically related to Phase 2A.

ORA has demonstrated that the parts of Section C (including attachments) that Pacific seeks to strike contain information that is relevant to Phase 2A.

Therefore, Pacific's motion to strike parts of Section C is denied. Parties are cautioned, however, that they may use this testimony only to the extent it has a clear and direct connection to Phase 2A issues. For example, those parts of Attachment R-D that address ORA's data requests pertaining to matters other than pensions, PBOPs, depreciation, or taxes are outside the scope of Phase 2A.

Although Pacific did not seek to strike the last sentence of Section C quoted above, Pacific's motion to strike the part of ORA's opening testimony that is referred to in the last sentence of Section C is granted elsewhere in this ruling. Therefore, the last sentence of Section C is moot with respect to Phase 2A, and this sentence will not be considered further in Phase 2A.

Finally, this ruling denies Pacific's motion to strike ORA's testimony to extent the motion seeks to bar ORA from presenting testimony in any part of this proceeding regarding allegations that Pacific has not cooperated with ORA. As set forth previously in this ruling, ORA may present testimony in Phase 2A that Pacific has not provided ORA with information that is relevant to Phase 2A issues. ORA may present similar testimony in Phase 2B with respect to Phase 2B issues, and in Phase 3 with respect to Phase 3 issues. In Phase 3, the Commission may make revisions to NRF based on the record developed regarding the level of utility cooperation in this proceeding.

Therefore, **IT IS RULED** that:

1. Pacific Bell's motion to strike parts of the Phase 2A testimony filed by the Office of Ratepayer Advocates (ORA) is granted in part and denied in part as set forth in the body of this ruling.
2. ORA shall serve by May 28, 2002, a revised copy of its testimony that conforms to this ruling.

Dated May 24, 2002, at San Francisco, California.

/s/ TIMOTHY KENNEY

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Timothy Kenney  
Administrative Law Judge



**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Granting in Part and Denying in Part Pacific Bell's Motion to Strike the Phase 2A Testimony filed by the Office of Ratepayer Advocates on all parties of record in this proceeding or their attorneys of record.

Dated May 24, 2002, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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